

BALLEW  
SCHNEIDER  
COVALT  
GAINES &  
ENGDAHL  
ATTORNEYS AT LAW, PC, LLO

MAR 16 2006

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March 14, 2006

Ms. Barbara L. Peterson  
Assistant Regional Counsel  
United States Environmental  
Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

RE: Beatrice Former Manufactured Gas Plant ("FMGP") Site  
Beatrice, Nebraska

Dear Ms. Peterson:

As you know, a meeting has been scheduled between representatives of the City of Beatrice and Centel for March 29, 2006 to negotiate terms of participation in assessment, determine of response activities, and allocation of costs associated therewith with regard to the Beatrice Former Manufactured Gas Plant site.

I am writing to report to you concerning a related albeit it perhaps ancillary matter. I do not know whether you have knowledge of these facts. If so, you will obviously have taken them into account to this point in time. An indication of as much will suffice. However, I do believe that if the matter has not been considered and, further, I suggest that it will be probable that some allowance or accommodation will be requested concerning negotiation of terms of a prospective consent decree.

The predecessor in interest (former owner) of the Beatrice Former Manufactured Gas Plant site is Aquila, Inc. (actually, Peoples Natural Gas, which was merged, after the purchase transaction into Aquila).

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I am enclosing two documents which I believe may be of interest to you.

Firstly, a copy of the purchase agreement for the property, as well as an affidavit of seller which I believe to be of great significance are submitted for your review. Please note that at the time of the closing of the transaction, Peoples Natural Gas, now Aquila, made an affirmative representation by way of an affidavit, by an authorized representative, over corporate oath, that they, as "sellers" were operators of the Manufactured Gas Plant which resulted in contamination, characterized as historic in nature.

Secondarily, I am enclosing a copy of an Amended Complaint which has now been filed in Gage County District Court. The second cause of action seeks an Order of Court, under Nebraska's declaratory judgment statute forestalling Aquila, by operation of estoppel, from denying the accuracy of the representation contained in the affidavit.

Should the Court see fit to grant the requested relief set forth in the second cause of action, Aquila would, I believe, as a matter of law, be considered as an operator and therefore generator with regard to the presence of contaminants on the site. As an operator and generator, I believe that Aquila would therefore be eligible for characterization as a potentially responsible party with regard to the site. I at least submit the issue to you for your consideration. I also suggest that given the financial costs involved, the ability to administratively spread the burden of those costs through inclusion through an additional PRP may be a desirable undertaking.

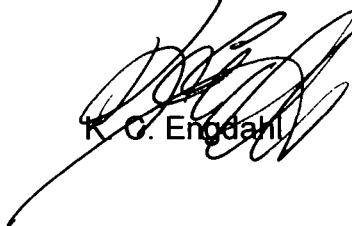
Third, please note that the first cause of action seeks rescission of the purchase agreement, such that Aquila would be divested with title to the property and the City of Beatrice would be divested of such title, as if the transaction did not occur. I believe that I previously made you aware of this claim. I know that it does not necessarily bear upon the current situation, but I am equally confident that, depending on the Court's view of the matter, such a determination could, in effect, under state law, yield the result that the City of Beatrice is not now and has never been an owner of the property which would, I believe, abrogate responsibility as an owner, having purchased with knowledge.

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My purpose in providing you this information is two-fold. I am and remain concerned that you be aware of the pendency of the litigation. I am also of the view that you may appreciate some obligation or perhaps opportunity to examine the question of generator status and resulting liability with regard to Aquila.

With this said, I simply submit the matter for your consideration and action as you see necessary or appropriate. Thank you for your attention to the matter.

Sincerely,



K. G. Engdahl

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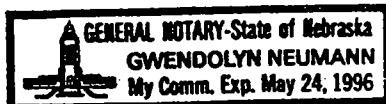
cc: Mr. Robert Schafer  
Mr. James Bauer

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Lancaster )

Dated this 08<sup>th</sup> day of January, 199~~8~~<sup>6</sup>.

x Smithy Burke

SUBSCRIBED and SWORN to before me this 8th day of January, 1996.



Gwendolyn Neumann

**CITY OF BEATRICE, NEBRASKA  
FLOODWAY PURCHASE PROGRAM**

THIS AGREEMENT, hereinafter referred to as "AGREEMENT" is dated this 8th day of January, 1995, by and between PEOPLES NATURAL GAS COMPANY, a division of UtiliCorp United Inc., a Delaware corporation, hereinafter referred to as "SELLER," whether one or more, and the CITY OF BEATRICE, NEBRASKA, hereinafter referred to as "PURCHASER".

SELLER hereby agrees to sell to PURCHASER, and PURCHASER hereby agrees to purchase from SELLER, certain real property upon the following terms and conditions:

1. The Property. The property of SELLER to be sold to PURCHASER pursuant to this AGREEMENT consists of the marketable fee simple title to land, including all improvements, in Gage County, Nebraska, described as follows, to-wit: the parcel of land in Gage County, Nebraska, described in the legal description attached hereto, but subject to modification after the final survey, and incorporated herein by reference as Exhibit "A", hereinafter referred to as "PROPERTY".

2. Price. The purchase price which PURCHASER agrees to pay to SELLER for the PROPERTY is the sum of Thirty-Nine Thousand Two Hundred Dollars (\$39,200.00), subject to adjustment by the Federal Emergency Management Agency to avoid duplication of Federal benefits, and subject to the final survey, provided, however, that PURCHASER's obligation to purchase the PROPERTY for such purchase price pursuant to this AGREEMENT shall be contingent upon the availability of Federal funds to finance the transaction described in this AGREEMENT.

3. Payment. The purchase price for the PROPERTY shall be paid by PURCHASER to SELLER at the time of closing, by PURCHASER's bank check.

4. Deed. The PROPERTY shall be conveyed by SELLER to PURCHASER by Full Warranty Deed free and clear of all leases, mortgages, liens (including real estate taxes) and other encumbrances, except easements and protective covenants now of record, such excepted items hereinafter being referred to collectively as "PERMITTED EXCEPTIONS".

5. Title Insurance. As soon as practicable after the date of this AGREEMENT, the PURCHASER shall deliver to the SELLER a commitment for a title insurance policy for the PROPERTY.

(a) Such commitment shall be issued by an authorized company in the amount of the purchase price and shall show marketable fee simple title to the PROPERTY to be vested in the SELLER, subject only to the PERMITTED

may be removed by the payment of money at the time of closing and which the SELLER may so remove at that time by using a portion of the purchase price to be paid at closing, including deposit of same for SELLER's account with the title insurer pursuant to a "title indemnity" or similar escrow arrangement pending removal or release of such liens or encumbrances. The aforesaid policy or commitment shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy, subject only to the exceptions as therein stated.

(b) If the aforesaid commitment discloses any exceptions to title, hereinafter referred to as NONPERMITTED EXCEPTIONS, other than the PERMITTED EXCEPTIONS, the SELLER shall have 30 days from the date of delivery of the commitment to the SELLER to have the NONPERMITTED EXCEPTIONS removed from the policy or commitment, or, at SELLER's expense, to have the title insurer commit to insure against loss or damage that may be occasioned by such NONPERMITTED EXCEPTIONS, and in such event, the time of closing shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided pursuant to Paragraph 8 hereof, or seven (7) days following the receipt by the PURCHASER of the Federal grant referred to hereinabove, whichever occurs later.

(c) If SELLER fails to have the NONPERMITTED EXCEPTIONS removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, PURCHASER may, at PURCHASER's election, terminate this AGREEMENT as to all of the PROPERTY or take title as it then is, in either case by giving the SELLER written notice of PURCHASER's election and, in the latter case, by tendering performance on PURCHASER's part. If PURCHASER fails to give notice of such election within ten days after the expiration of the aforesaid 30 days, then PURCHASER shall be deemed to have elected to take title as it then is, and this transaction shall close in accordance with the preceding provisions hereof. If PURCHASER shall give notice of PURCHASER's election to terminate this AGREEMENT, as aforesaid, within the time provided, then this AGREEMENT shall thereupon, without further action by any party, become null and void and neither party shall have any obligation hereunder.

6. Surveys. All surveys which the PURCHASER may require in connection with the closing of this transaction shall be at the expense of PURCHASER.

7. Eminent Domain. It is agreed among the parties that this AGREEMENT is entered into voluntarily, SELLER having been informed that this is a voluntary program and that PURCHASER will not use its power of eminent domain (condemnation) to acquire the PROPERTY.

8. Closing. This transaction shall be closed on or before August 14, 1996. The transaction shall be closed at the address of the PURCHASER, set out below, or at such other place as may be agreed upon by SELLER and PURCHASER.

All taxes relating to PROPERTY must be paid out prior to closing and SELLER shall provide proof of payment at closing. Between the date when this AGREEMENT is fully executed and the date of closing, SELLER assumes all risk for destruction of or damage to PROPERTY, and SELLER agrees that the purchase price set forth in Paragraph 2 above may be adjusted, at PURCHASER'S sole discretion, according to the damage or destruction sustained.

9. Delivery of possession. Possession of the PROPERTY shall be delivered to PURCHASER at closing subject to the PERMITTED EXCEPTIONS, or at such subsequent time as may be agreed upon in writing by SELLER and PURCHASER. Prior to possession, PURCHASER may enter the PROPERTY from time to time for the purpose of performing such tests, inspections and surveys as the PURCHASER deems necessary.

10. Revenue Stamps. All documentary stamp taxes shall be paid by PURCHASER to the extent that this transaction is not exempt therefrom.

11. Assignment. This AGREEMENT, and/or any interest of SELLER hereunder, may not be assigned in whole or in part by the SELLER without the prior written consent of the PURCHASER.

12. Recordation. This AGREEMENT may be recorded in whole or in part.

13. Entire Agreement. This AGREEMENT contains the entire agreement between the parties, and SELLER agrees that neither the PURCHASER, nor any of its officers, agents, or employees, have made any representation or promise with respect to, or affecting the PROPERTY or adjoining real estate, or this AGREEMENT, not expressly contained herein.

14. Governing law. The provisions of this AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

15. Captions. The captions contained in this AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of this AGREEMENT.

16. Time. Time is of the essence of this AGREEMENT.

17. Default: specific performance. If SELLER shall default hereunder, PURCHASER shall be entitled to enforce specific performance of this AGREEMENT or may terminate this AGREEMENT, at PURCHASER'S option.

18. Notices. All notices herein required shall be in writing and shall be served on

18. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service.

19. Survival of conditions. The terms and conditions of this AGREEMENT, and all representations, covenants, warranties, and agreements herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

20. Binding effect. The provisions of this AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

21. Salvage. After the execution of this AGREEMENT and before closing, SELLER shall have the right, at SELLER'S cost, to remove from the property and convert to SELLER'S own use any and all personal property on the PROPERTY, including contents of structures and fences. Until the closing, SELLER shall bear the risk of loss of all structures or other improvements on the PROPERTY and shall have an insurable interest therein. SELLER shall not commit waste as to any structure or improvement on the PROPERTY. Any partial salvage of a building or other structure on the PROPERTY by SELLER shall be done in a good and workmanlike manner so as not to impair the structural integrity of the building or structure. Any doors or windows which are removed from any structure shall be boarded up so as to prevent entry into the structure. The PROPERTY shall be left by SELLER in good and clean condition. SELLER agrees to hold harmless and defend PURCHASER from any and all claims, actions, or damages resulting from SELLER'S salvage as described herein.

Simultaneously with the signing of this AGREEMENT, SELLER shall submit to PURCHASER for PURCHASER's approval a detailed plan outlining SELLER'S salvage plan. The proposed plan shall include a list of what is to be salvaged. As soon as salvage is completed according to the approved plan, SELLER shall notify Kirkham, Michael and Associates, Inc., and an agent will conduct an inspection of the PROPERTY prior to closing.



SELLER(s):

X *Timothy Bunde*

X \_\_\_\_\_

CITY OF BEATRICE  
PURCHASER  
205 North 4th Street  
Beatrice, NE 68310-0279

By *[Signature]*

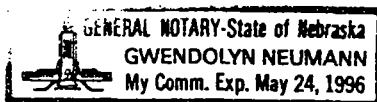
STATE OF NEBRASKA )

COUNTY OF Lancaster )

) ss.  
)

On this 8<sup>th</sup> day of January, 199<sup>6</sup>, before me, a Notary Public in and for said County, personally came the above named PEOPLES NATURAL GAS COMPANY, a division of UtiliCorp United Inc., a Delaware corporation, SELLER, and acknowledged the execution of the above Purchase AGREEMENT as his/her voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.



*Gwendolyn Neumann*  
Notary Public

**EXHIBIT "A"**

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10), ELEVEN (11), AND TWELVE (12),  
BLOCK SEVENTY-ONE (71), ORIGINAL TOWN, NOW CITY OF BEATRICE, GAGE  
COUNTY, NEBRASKA.

## TRANSACTION DISCLOSURE STATEMENT

1. I/we Peoples Natural Gas Company, a division of UtiliCorp United Inc., a Delaware corporation, am/are the owner(s) of fee title in property identified as 215 S. 1st Street, Beatrice, NE 68310.

2. I/we have been notified by the City of Beatrice, Nebraska that it may wish to purchase the above property, and that, if I/we agree to sell, it will be necessary for me to move permanently from the property.

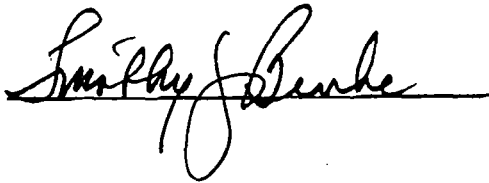
3. I/we have been notified by the City that it believes the fair market value of the property to be \$39,200.00 as determined by appropriate valuation procedures used by the City.

4. I/we have been informed by the City, in writing, that I/we am not required to sell the above property to the City, and that the City will not use the power of eminent domain to acquire the property in the event I/we do not wish to sell it. I understand that this means that I/we do not have to sell to the City.

5. I/we have been notified by the City that, if I/we voluntarily sell the above property to the City, this will be a voluntary transaction. I/we am aware of the fact that I/we am not entitled to the relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act and the Nebraska Relocation Assistance Act, which are available to persons who must give up their property involuntarily, and I/we will not claim any such benefits.

6. I have been notified that the City's offer shall expire on \_\_\_\_\_, unless the property has been acquired by that date.

SELLERS(s)



DATE

1-8-96

7. The City stipulates and agrees that:

(a) it has provided the notifications and information described in paragraphs 2 through 5, and

(b) the property identified above is not a part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

CITY OF BEATRICE, NEBRASKA

By: 

Title: 

Date: 3/1/96

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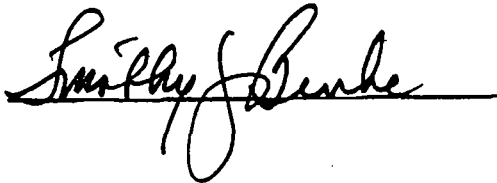
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CITY OF BEATRICE, NEBRASKA

By: 

Title: City Administrator

Date: 3/1/96